



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Mountain  
Plains  
Region

1244 Speer Boulevard  
Denver, CO 80204

Reply to  
Attn. of:

SP 94-C-8

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Subject:

Sales Agency Agreements for Commercially Prepared Food in the National School Lunch Program

To:

STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri ED,  
(Special Nutrition Programs) Montana OPI, Nebraska ED, North Dakota,  
South Dakota, Utah, Wyoming ED

This guidance covers one type of arrangement that might be engaged in by a firm which is a commercial restaurant (usually a national name-brand outlet such as Pizza Hut, etc.), and a school food authority (SFA). Sales agency agreements enjoyed a period of particular popularity several years ago as one means by which an SFA could acquire national name-brand restaurant foods for use in the school food service. It was thought by some that a sales agency agreement could be a means of by-passing USDA Food Safety and Inspection Service (FSIS) meat inspection requirements. More recently fresh meat-topped pizza, sold by many national restaurant outlets to SFAs, has received an exemption from FSIS meat inspection requirements.

The FSIS has, in fact, approved the "sales agency agreement" between the commercial firm and the SFA as a means of avoiding the FSIS meat inspection requirements. The FSIS meat inspection rules require an inspection of all foods and food items which contain meat when these items are sold for re-sale or service by a second entity (such as a school food service). In a sales agency agreement the SFA permits "agents" of the commercial firm (regular firm employees or school food service employees) to sell directly to customers (children) in schools.

**While the arrangement eliminates the need for meat inspection, lunches containing food served under sales agency agreements may not be claimed for National School Lunch Program (NSLP) reimbursement.** Any food items sold or served under a sales agency agreement cannot be considered to be part of a SFA's nonprofit school food service which is defined, in part, in Section 210.2 of the NSLP regulations as ". . . food service operations conducted by the school food authority . . .". Under the sales agency agreement, the commercial firm, through its sales agent, sells directly to its customers and thus "conducts" the operation, not the SFA.

Additionally, the a la carte sale and service of food under a sales agency agreement is also not allowable in NSLP schools. Section 9(e) of the National School Lunch Act, added in 1986, requires that a private company operating in a school must offer free, reduced-price, and paid reimbursable meals to all students.

Commercial restaurant firms may enter into agreements with SFAs to function as food service management companies.

If you have any question on this issue, please contact our office.

*Ann C. Hector*

ANN C. HECTOR  
Regional Director  
Special Nutrition Programs